

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	
DEPARTMENT OF)	Decision of Disapproval
HEALTH CARE SERVICES)	of Regulatory Action
)	
REGULATORY ACTION:)	(Gov. Code, sec. 11349.3)
)	
Title 22, California Code of Regulations)	
)	OAL File No. 2008-0226-04 S
Amend sections: 51098.5, 51202.5,)	
51309.5 and 51503.3)	
)	

DECISION SUMMARY

The Department of Health Care Services (Department) proposed to amend the California Code of Regulations, Title 22, sections 51098.5, 51202.5, 51309.5 and 51503.3 relating to Medi-Cal reimbursements for sign language interpreter services. This proposed regulatory action would have amended the definition of "sign language interpreter services," required a Medi-Cal enrolled provider to select another interpreter if the interpreter selected by the beneficiary is determined to be inadequate, expanded the scope of health care services for which Medi-Cal will reimburse enrolled providers for using sign language interpreter services, and provided that Medi-Cal will reimburse for sign language interpreter services for Medi-Cal enrolled providers, not just physicians, that employ fewer than 15 employees.

On April 9, 2008, the Office of Administrative Law (OAL) notified the Department that the regulatory action was disapproved for incorrect procedure. Specifically, the rulemaking file does not contain a Standard Form 399 (STD. 399) that has written concurrence from the State Department of Finance (Finance).

INCORRECT PROCEDURE

Government Code section 11347.3(b)(5) requires that the rulemaking file contain the estimate, together with the supporting data and calculations, required by Government Code section 11346.5(a)(6). Section 11346.5(a)(6) requires, in part, the estimate of the cost to any state agency. This paragraph further defines "cost" as "additional [cost] ..., both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations." Government Code section 11357 requires that Finance adopt instructions for inclusion in the State

Administrative Manual (SAM) prescribing the methods that any agency shall use in making the estimate required by section 11346.5(a)(6).

For purposes of reporting this estimate and other information, Finance has developed, and requires regulatory agencies to use, the STD. 399. (SAM section 6650.) SAM section 6650 requires the following:

Copies of the calculations and assumptions leading to dollar estimate should also be attached. Those calculations and assumptions must address the proposed regulation's fiscal impact in the current fiscal year and in the two subsequent fiscal years.... The OAL will not approve regulation filings which do not include a properly completed STD. 399....

SAM section 6660 establishes when financial estimates contained in an STD. 399 require the concurrence of Finance. Section 6660 states:

A state agency is not required in all instances to obtain the concurrence of [Finance] in its estimate of the fiscal effect of its proposed regulation on governmental entities. However, such concurrence is required for those estimates which contain any of the following elements, as depicted on STD. 399:

- | | |
|----------------------------------|-------------------|
| A.1-Reimbursable Local Costs | B.1-State Costs |
| A.2-Non-Reimbursable Local Costs | B.2-State Savings |
| A.3-Local Savings | |

In the rulemaking file, the Fiscal Impact Statement part of the STD. 399 indicates in section B.3. that "[n]o fiscal impact exists" on state government and in section C.3., the STD. 399 indicates "[n]o fiscal impact exists" on federal funding of state programs. However, the "Fiscal Analysis of Regulation R-28-02: Sign Language Interpreters" developed by the Department and attached to the STD. 399 provides the following assumption:

Assumptions:

1. The amount spent on sign language services in FY 2005-06 was \$3000.
2. Assume the utilization of sign language interpreter services will increase by 45% with additional Medi-Cal enrolled providers.

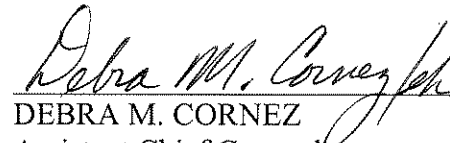
$$\$3,000 \times 45\% = \$1,350 (\$675 \text{ FFP}) \quad \text{Total Costs to Medi-Cal}$$

The calculation and assumption attached to the STD. 399 conflicts with the information provided on the STD. 399. Furthermore, because the Department's analysis estimates that the regulation amendments would result in a cost to the state, it appears that written concurrence by Finance is required but was not obtained. OAL, therefore, must not approve this regulatory filing because the STD. 399 was not properly completed. (SAM section 6650.)

CONCLUSION

For the reasons set forth above, the OAL has disapproved the proposed amendment of sections 51098.5, 51202.5, 51309.5 and 51503.3 of title 22 of the California Code of Regulations.

Date: April 10, 2008


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